

## *Report on: il Brevetto Unitario ed il suo Tribunale seminar*



### **Introduction:**

In a seminar that took place at the **University of Macerata on 9 May 2025**, that was introduced by professor **Gianluca Contaldi** and is a part of **Modulo Jean Monnet<sup>1</sup> (AlcolP)**. A series of transformations in the European union was introduced in the field of **intellectual property** with the advent of the **unitary patent** and the **unified patent court**. These initiatives aim to harmonize and simplify the European patent system, traditionally fragmented among national jurisdictions.

### **The origins of the unitary patent system:**

Professor Ferrari introduced the **unitary patent system** as a **culmination of extensive** legislative and political efforts, particularly the **EU Regulation No. 1257 of 2012<sup>2</sup>**. The aim: to eliminate the inefficiencies of the current European patent system and foster innovation through a more streamlined and cost-effective process.

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<sup>1</sup> Jean Monnet, a French politician and economic advisor, was a lifelong advocate of European integration, whose ideas inspired the Schuman Plan to unite French and German domestic coal and steel production under a single structure.

<sup>2</sup> Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection

Currently, patents granted by the **European Patent Office (EPO<sup>3</sup>)** are essentially bundles of national patents that must be validated and enforced separately in each country, resulting in high costs and legal uncertainties. The **Unitary Patent**, in contrast, offers a single legal title enforceable across participating EU states, an unprecedented step toward true legal unification.

## Simplification and Cost Reduction

One of the main advantages of the Unitary Patent system lies in its **simplified administrative procedures**. Applicants can obtain patent protection in all participating states through a single application, bypassing the need for national validations. This harmonized approach significantly **reduces the cost** of patent validation and maintenance, addressing a long-standing complaint among inventors and businesses.

Although it has the potential to cover all 27 EU Member States, actual coverage is limited to countries that have both joined the **enhanced cooperation framework<sup>4</sup>** and **ratified the Unified Patent Court Agreement<sup>5</sup> (UPCA)**. As of now, **18 countries** have ratified the UPCA, while others such as **Spain, Croatia, and Poland** remain outside the system due to political, linguistic, or legal concerns.

## The Unified Patent Court: Structure and Function

Dr. Perrotti, a judge of the UPC, presented the **Unified Patent Court** as a necessary complement to the Unitary Patent. The court provides centralized **judicial authority** for patent disputes, resolving a major issue under the previous system where patent litigation had to be pursued separately in each jurisdiction often leading to inconsistent rulings.

The **UPC** is a unique legal body designed to bridge the gap between diverse legal traditions in Europe. It consists of a **Court of Appeal** located in **Luxembourg**, **central divisions** in **Paris, Munich, and Milan** (the latter replacing London after Brexit), and **local and regional divisions** spread across countries like Germany, Italy, and the Netherlands.

The court's structure is **sector-specific**:

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<sup>3</sup> The European Patent Office (EPO) is the executive arm of the European Patent Organisation, and it's responsible for the granting of European patents.

<sup>4</sup> The enhanced cooperation framework is a legal mechanism within the European Union (EU) that allows a group of at least nine EU Member States to move forward on deeper integration or new policies, even if not all EU countries agree.

<sup>5</sup> An international agreement signed on 19 February 2013 in Brussels, establishing the Unified Patent Court (UPC) a supranational court for litigation concerning European patents (both unitary and non-unitary) and supplementary protection certificates

- **Munich** handles mechanical technologies,
- **Milan** oversees biotechnology and some pharmaceutical litigation,
- **Paris** manages complex pharmaceutical and general patent disputes.

Local divisions address infringement cases and can also handle counterclaims for invalidity, whereas central divisions may directly assess validity regardless of infringement claims. The **allocation of cases** is guided by administrative classifications and the **domicile of the defendant** or the **location of infringement**.

Germany is particularly active, with **four local divisions** competing to attract high-profile litigation a sign of the increasing strategic value of UPC locations.

## Judicial Panels (Court Banches) and Expertise

One of the hallmarks of the UPC is its **collegial decision-making system**, integrating both **Legal and technical judges**:

- The **Court of Appeal** comprises three legal and two technical judges,
- The **central division** includes two legal and one technical Judge,
- The **local divisions** are composed of three legal and one technical Judge.

Notably, technical judges are full members of the panels, not Just consultants a departure from systems like Italy's, where expert input is typically advisory.

To ensure **multinational legal representation**, no panel can be composed solely of judges from one country, reinforcing the European spirit of integration.

## Opt-In and Opt-Out Mechanism

During the system's transitional period, patent holders were given the choice to **opt-out** their patents from the UPC's jurisdiction. If opted out, disputes must continue in national courts. However, once litigation begins under one system, switching is no longer possible. This **locked-in/locked-out mechanism** has significant implications for strategic patent litigation and necessitates early and informed decisions by rights holders.

## Language and Use of the System

The **language regime** of the UPC prioritizes efficiency but has raised concerns about inclusiveness. Proceedings generally occur in one of the EPO's official languages: **English, German, or French**. However, local divisions may choose to operate in national languages. For example, Milan allows **Italian and English**, while the **absence of Spanish** has been a major reason for Spain's refusal to join the system.

Recent statistics indicate that most proceedings are conducted in **English (55%)**, followed by **German (38%)**, with minor usage of French, Italian, and others. German divisions, particularly **Munich**, dominate the volume of litigation.

## Legal Foundations and Legislative Complexity

The **Unitary Patent** and **UPC** systems rest on the **European Patent Convention**<sup>6</sup>(EPC), augmented by EU regulations. The supremacy of **EU law** over national law is a foundational principle, which means that EU law takes precedent over national laws, and judges who fail to comply face legal consequences, including state liability for breaches of EU obligations.

However, **legal complexity abounds**, especially when patent disputes intersect with other legal areas like contracts or corporate law, often requiring national rules to be considered alongside European frameworks. This means that judges at the Unified Patent court must apply and interpret multiple legal systems at a time. For instance, EU law including all regulations and directives, case law from the **CJEU**<sup>7</sup> and lastly national laws from individual countries when those laws still apply. Because patent law is partly harmonized at the EU level but still rooted in national legal traditions, the UPC must carefully **blend and balance these sources** to ensure fair and consistent decisions in cross-border disputes.

## Supplementary Protection Certificates and Standard Essential Patents

**Supplementary Protection Certificates (SPCs)** extend the protection of certain patents (e.g., pharmaceuticals) beyond their standard term, compensating for regulatory delays. Currently issued at the national level, the EU is contemplating a **centralized system** for SPCs under the **European Union Intellectual Property Office**<sup>8</sup> (EUIPO), a move potentially shifting competence away from the **EPO**<sup>9</sup>.

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<sup>6</sup> The European Patent Convention (EPC) is the foundational treaty that created the European Patent Organisation (EPO) and defines the legal framework for granting European patents.

<sup>7</sup> court of justice of the european union

<sup>8</sup> **EUIPO** is the central hub for trademark and design protection in the European Union. It offers efficient, EU wide intellectual property protection with one registration, and plays a key role in IP enforcement, education, and support especially for businesses operating across borders

<sup>9</sup> The European Patent Office is the executive arm of the European Patent Organisation, responsible for examining and granting European patents under a unified procedure.

Similarly, **Standard Essential Patents<sup>10</sup> (SEPs)** critical for implementing technical standards are under review by the European Commission because SEPs are vital for ensuring interoperability between devices and systems, managing them carries significant economic and legal importance. While the Commission proposes a separate system to govern **SEPs** by creating a specific system to monitor, register, and partially regulate the use of these patents, it has not clearly defined the **UPC's** role in this framework, causing concern among member states about jurisdictional overlaps and fragmentation.

## Political dynamics and geopolitical tensions:

Several internal political dynamics and geopolitical tensions have significantly influenced the ratification and implementation of the Unified Patent Court Agreement (UPCA). Notably **Poland and Hungary**, have adopted **Eurosceptic positions** challenging the primacy of EU law and have refrained from ratifying the UPCA. Hungary's case is especially symbolic: it was originally slated to host a UPC judicial training center in **Budapest**, but its failure to ratify forced the creation of a **rotating training system** instead.

Meanwhile, **Spain** resists the UPC due to the exclusion of Spanish from official court languages, highlighting broader tensions between **linguistic representation** and **legal efficiency** within the EU.

**Spain's** position underscores how cultural and linguistic factors remain a crucial challenge in the legal and political integration processes of the **European Union**.

## Strategic Choices by Industry Players

Industry responses to the **Unitary Patent system** vary. For instance, **Philips** has embraced the new regime, by registering most of its patents as unitary patents, which reflects a proactive approach and strong trust in the new European intellectual property institutions. The new system offers major advantages such as simpler administration, lower costs, and greater consistency in legal decisions.

In contrast, **pharmaceutical giants** remain cautious, opting out due to the perceived risks of centralized invalidity proceedings and instead stick to the traditional method of validating patents individually in multiple countries. Because if a central revocation were issued by the UPC, it could wipe out patents across all participating countries at once.

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<sup>10</sup> are patents that protect technology essential to a standard meaning that any company that wants to comply with the standard must use the patented technology.

That's a huge risk when a single patent may protect a **blockbuster drug**<sup>11</sup> worth billions. These divergent strategies reflect different **risk assessments** and **economic priorities**. Nonetheless, **confidence in the UPC is growing**, particularly among American companies who see it as a credible forum for patent enforcement. They are used to centralized enforcement systems and see the UPC as **credible, efficient, Authoritative**. For them, the **UPC** offers a **way to navigate Europe's complex legal landscape** more easily and to get more **consistent and predictable rulings**.

## Conclusion:

The seminar held at the **University of Macerata** provided a comprehensive overview of the **Unitary Patent system** and the **Unified Patent Court (UPC)**, highlighting the major transformations underway in the European patent landscape. These reforms aim to streamline and harmonize a traditionally fragmented system, offering a single, centralized legal framework for patent protection and enforcement across participating EU countries.

The discussions underlined both the **benefits and complexities** of this new system. On one hand, **the Unitary Patent** promises lower **administrative costs, simplified procedures, and greater legal certainty**. The UPC, with its multinational judicial panels and centralized authority, addresses the **longstanding issue of inconsistent rulings across national courts**. On the other hand, challenges remain from **language regime disputes and legal uncertainties in cross-disciplinary cases**, to **political resistance** from member states that have yet to **ratify the UPC Agreement**.

Industrial responses to the new system reflect a clear divide. Innovative and tech-focused companies like **Philips** see the UPC as an opportunity for **efficiency and cost savings**. Conversely, sectors like **pharmaceuticals** remain wary, concerned that centralized invalidation of critical patents could lead to **substantial financial losses**.

Ultimately, the success of the **Unitary Patent and UPC** will depend on how well they manage to balance legal integration with the **diverse economic, legal, and linguistic realities of the European Union**. As the system matures, continued dialogue among institutions, industry stakeholders, and member states will be essential to ensuring that this ambitious reform delivers on its promise of a more coherent, accessible, and competitive European patent environment.

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<sup>11</sup> is a prescription medication that generates at least 1\$ billion (USD) in annual revenue for the company that markets it.

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